

ORDER NO. 1650

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail
Priority Mail Contract 53

Docket No. MC2013-36

Competitive Product Prices
Priority Mail Contract 53 (MC2013-36)
Negotiated Service Agreement

Docket No. CP2013-47

ORDER ADDING PRIORITY MAIL CONTRACT 53
TO THE COMPETITIVE PRODUCT LIST

(Issued February 8, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 53 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 53 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 30, 2013 (Request).

II. BACKGROUND

On January 30, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 53 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On January 31, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1644, Notice and Order Concerning the Addition of Priority Mail Contract 53 to the Competitive Product List, January 31, 2013.

III. COMMENTS

The Public Representative filed comments on February 7, 2013.⁵ No other interested person submitted comments. The Public Representative states that he has reviewed the contract, the Statement of Supporting Justification, and the supporting financial data and model. *Id.* at 2. He states that the contract is appropriately classified as competitive pursuant to 39 U.S.C. § 3642 and that addition of Priority Mail Contract 53 to the competitive product list is appropriate. *Id.* at 2-3. The Public Representative also states that the negotiated prices in the instant contract appear to generate sufficient revenues for the contract to cover costs in its first year, satisfying the requirements of 39 U.S.C. § 3633(a). *Id.* at 3. He expresses concern, however, that the data provided do not demonstrate that the contract will cover its costs in contract years two and three. *Id.* The Public Representative notes that his concern is mitigated in part by the contract term that allows for an annual adjustment in contract prices during years two and three. *Id.* He also acknowledges that the Postal Service is responsible for filing the financial results of the contract in each year's Annual Compliance Report, which will enable the Commission to ensure that the requirements of 39 U.S.C. § 3633(a) continue to be met. *Id.*

The Public Representative concludes that Priority Mail Contract 53 should be added to the competitive product list. *Id.* at 2.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 53 to either the market

⁵ Public Representative Comments on Postal Service Request to Add Priority Mail Contract 53 to the Competitive Product List, February 7, 2013 (PR Comments).

dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 53 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because Priority Mail Contract 53 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs during its first year. The Public Representative raises concerns about the lack of data for years two and three of the contract. PR Comments at 3. As noted by the Public Representative, however, the contract requires annual price adjustments to account for changes in prices of general applicability for Priority Mail Commercial Plus Cubic. *Id.* See also Request,

Attachment B at 2. These provisions should allow the contract's revenues to cover costs in years two and three. Thus, the Commission finds that Priority Mail Contract 53 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission will review the contract's financial performance for consistency with 39 U.S.C. § 3633(a).

Other considerations. By its terms, the contract becomes effective one business day after the day that the Commission issues all necessary regulatory approvals. Request, Attachment B at 2. The contract is scheduled to expire 3 years after the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party. *Id.*

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by cubic tier and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 53 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 53 (MC2013-36 and CP2013-47) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date as discussed in this Order.

3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by cubic tier and zone associated with the contract.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-36 and CP2013-47. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 53

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